HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Appeal No.875 of 2006

Between:

Bethala Venkata Rao

... Appellant

And

The State Election Commission
and four others

... Respondents

::JUDGMENT::

Counsel for the appellant: Sri K. Chidambaram

Counsel for respondent No.1: Sri V.V. Prabhakar Rao

Counsel for respondent Nos.2 and 3: Government Pleader for Panchayat Raj

Counsel for respondent No.4: Sri M. Prabhakar Rao

Counsel for respondent No.5: Sri S. Subba Reddy

August 09, 2006

Per G.S. Singhvi, CJ

This appeal is directed against order dated 25-7-2006 passed by the learned Single Judge in WPMP No.19063 of 2006 in Writ Petition No.15310 of 2006 whereby he directed the non-petitioners in the writ petition (respondent Nos.1 to 4 herein) to allow the writ petitioner to contest election for the office of Sarpanch of

Venkatraopalem Gram Panchayat, Tadepalligudem Mandal, West Godavari District.

The appellant, who is a resident of Venkatraopalem Village filed nomination for the office of Sarpanch of Venkatraopalem Gram Panchayat in furtherance of notification dated 09-07-2006 issued by State Election Commission (for short 'the Commission) and election schedule notified by it. Respondent No.5 Madasi Ashok Raj Kumar and some others also filed their nomination papers. On the date of scrutiny i.e., 20-7-2006, the Returning Officer, Venkataraopalem Gram Panchayat (respondent No.4) rejected the nominations of all other candidates and accepted the one filed by the appellant. On 23-7-2006, respondent No.4 declared the appellant as duly elected Sarpanch of Venkatraopalem Gram Panchayat and issued declarations in Form Nos.10 and 29.

Respondent No.5 challenged the rejection of his nomination paper by filing an appeal before Deputy District Election Authority-cum-Revenue Divisional Officer, Eluru (respondent No.3). The latter rejected his appeal vide order dated 22-7-2006. On 25-7-2006, the learned Single Judge entertained the writ petition filed by respondent No.5, which was registered as Writ Petition No.15310 of 2006, and passed interim order in W.P.M.P No.19063 of 2006, which is re-produced below:

> "In normal circumstances, this Court would not have interfered, but for the fact that this Court passed interim orders in Writ Petition Nos.14189, 14190 and 14352 of 2006. It is also stated that the above matters came before a Division Bench and in view of the detailed interim orders passed by this Court, the said writ petitions were closed.
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> In view of the same, inasmuch as the rejection of nomination is on the ground that the petitioner is a fair price shop dealer, the said ground is not a disqualification and in

fact, this Court followed the decision of the Apex Court and passed orders. In view of the same, the orders impugned cannot be sustained.

Hence, the respondents are directed to allow the petitioner to contest in the elections by accepting the nomination to the post of Sarpanch of Venkataraopalem Gram Panchayat, Tadepalligudem Mandal, West Godavari District, which is going to be held on 29-07-2006."

Shri K.Chidambaram, learned counsel for the appellant, argued that the writ petition filed by respondent No.5 is liable to be dismissed because the said respondent deliberately suppressed the fact that respondent No.4 had already declared his client duly elected to the office of Sarpanch. Learned counsel further argued that in view of the bar contained in Article 243-O of the Constitution, the writ petition filed by respondent No.5 could not have been entertained by the learned Single Judge.

Shri S.Subba Reddy, learned counsel for respondent No.5 submitted that his client was not aware of the declaration made by respondent No.4 on 23-7-2006 and, therefore, he cannot be accused of having approached the Court with unclean hands. Shri Reddy then submitted that his client has already applied for amendment of the main writ petition and impleadment of the appellant as a party respondent.

We have considered the respective submissions. Although we are prima facie of the view that the writ petition filed by respondent No.5 questioning wrongful rejection of his nomination paper is liable to be dismissed as not maintainable in view of the bar contained in Article 243-O of the Constitution as interpreted by the Division Bench in recent orders passed in **The State Election Commission v. M. Rajendra Prasad and others** {W.A.(SR) No.65599 of 2006 dated

23-6-2006} and **Eppala China Venkateswarlu and others v. The Secretary to Government, Social Welfare (F) Department, Government of Andhra Pradesh, Hyderabad and others** {Writ Petition No.14068 of 2006 dated 3-8-2006}, we refrain from expressing final opinion on this issue because the writ petition is yet to be adjudicated by the learned Single Judge.

However, keeping in view the fact that respondent No.4 had declared the appellant duly elected to the office of Sarpanch, Venkataraopalem Gram Panchayat on 23.07.2006 and this fact was not brought to the notice of the learned Single Judge, we are convinced that the order under challenge is liable to be set aside.

For the reasons stated above, the appeal is allowed and the order dated 25-7-2006 passed by the learned Single Judge in WPMP No.16093 of 2006 is set aside.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

August 09, 2006
svs